

To: The Honorable Mayor and City Council

From: Karen Muir, Risk Manager

Date: April 10, 2012

RE: Hector Pineda v/s City of North Miami

RECOMMENDATION

It is recommended that the City Council approve settlement of Risk Management Case: Hector Pineda v/s City of North Miami, Risk Management Case #AL-10-W-35-PD in the amount of \$45,000.

BACKGROUND

On 9/4/10 Mr. Pineda suffered injuries when his personal vehicle was impacted by a North Miami Police vehicle as it proceeded through an intersection in an emergency mode. Mr. Pineda's vehicle was totaled in this accident.

Mr. Pineda who was transported by rescue from the scene has undergone diagnostic testing that confirms multiple injuries resulting from this accident. Medical records also support the extent of Mr. Pineda's injuries where surgery will be the ultimate remedy to regain his pre-injury level of functioning. After undergoing conservative treatment, he was released from further care, having attained his maximum level of improvement, with a 15% permanent impairment rating. Medicals to date have exhausted his \$10,000 Personal Injury Protection (PIP) coverage, leaving under \$2,000 in out of pocket cost. Future medicals including surgery will substantially exceed the current expenditure level. His initial settlement demand was \$100,000.

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Hector Pineda v/s City of North Miami
R/M Case#AL-10-W-35-PW

The Risk Management Committee convened on several occasions to discuss this case. At its February 9, 2012 meeting, a recommendation was made to settle this case for \$45,000.

The Risk Management Committee believes this settlement is in the best economic interest of the City. Although comparative negligence is contended in this case, it is Risk Management's position that the greater proportion of negligence could be levied against the City given the investigative material compiled. Furthermore, both the cost of litigation and jury settlement will undoubtedly exceed \$45,000. This tentative settlement is also consistent with prior settlements for negligence.

Funding for this settlement is available in the Risk Management fund.

Attachments

Resolution

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AUTHORIZING THE CITY MANAGER AND CITY ATTORNEY TO EXECUTE A SETTLEMENT AGREEMENT IN THE PRE-LITIGATION MATTER OF HECTOR PINEDA V. CITY OF NORTH MIAMI, UPON THE EXECUTION OF A GENERAL RELEASE, DISCHARGING THE CITY OF NORTH MIAMI, ITS OFFICERS, AGENTS AND SERVANTS AGAINST ANY AND ALL CLAIMS AND DEMANDS, IN CONNECTION WITH THIS ACTION; PROVIDING FOR AN EFFECTIVE DATE AND ALL OTHER PURPOSES.

WHEREAS, Hector Pineda suffered injuries when his personal vehicle was impacted by a North Miami Police vehicle as it proceeded through an intersection in an emergency mode; and

WHEREAS, after undergoing conservative treatment, Mr. Pineda was released from further care, having attained his maximum level of improvement with a fifteen (15) percent permanent impairment rating; and

WHEREAS, Mr. Pineda may need extensive future medical treatment because of his injuries; and

WHEREAS, based on the investigation conducted at the scene of the accident as well as subsequently performed, there may be a viable basis to claim comparative negligence; and

WHEREAS, Mr. Pineda's initial settlement demand was One Hundred Thousand Dollars (\$100,000.00); and

WHEREAS, the Risk Management Committee has investigated this claim, negotiated with Mr. Pineda's attorney and recommends that said claim and lawsuit be settled for a sum not to exceed Forty-Five Thousand Dollars (\$45,000.00); and

WHEREAS, the costs to defend and litigate this action could easily exceed Forty-Five Thousand Dollars (\$45,000.00); and

WHEREAS, the Mayor and City Council believe that it is in the best economic interest of the City to authorize the settlement of the claim with Mr. Pineda.

NOW THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA:

Section 1. Authority of City Manager. The Mayor and City Council of the City of North Miami, Florida, hereby authorize the city manager and city attorney to execute a settlement agreement to settle the claim of Hector Pineda v. City of North Miami, Risk Management Case No. AL-10-W-35-PD, upon the execution of a general release, discharging the City of North Miami, its officers, agents and servants against any and all claims and demands, in connection with this action.

Section 2. Effective Date. This Resolution shall become effective immediately upon adoption.

PASSED AND ADOPTED by a _____ vote of the Mayor and City Council of the City of North Miami, Florida, this _____ day of April, 2012.

ANDRE D. PIERRE, ESQ.
MAYOR

ATTEST:

MICHAEL A. ETIENNE, ESQ.
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

REGINE M. MONESTIME
CITY ATTORNEY

SPONSORED BY: CITY ADMINISTRATION

Moved by: _____

Seconded by: _____

Vote:

Mayor Andre D. Pierre, Esq.	_____ (Yes) _____ (No)
Vice Mayor Jean R. Marcellus	_____ (Yes) _____ (No)
Councilperson Michael R. Blynn, Esq.	_____ (Yes) _____ (No)
Councilperson Scott Galvin	_____ (Yes) _____ (No)
Councilperson Marie Erlande Steril	_____ (Yes) _____ (No)